IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

RIDH SINGH V/S STATE & ORS.

S.B.CIVIL WRIT No. 796 of 1993
UNDER ARTICLE 226 OF THE
CONSTITUTION OF INDIA.

Date of order : 23rd May, 2006

PRESENT
HON'BLE SHRI N.P.GUPTA,J.

Mr. M.S. Singhvi & Mr. Rajat Dave, for the petitioner.
Mr.N.M. Lodha, AAG, and Mr.B.L. Bhati, AGA, for the respondents.

BY THE COURT:

This petition has been filed by the petitioner, claiming a direction to the respondents to give promotion to the petitioner on the post of Office Assistant and Office Superintendent, and from the date the persons promoted on the post of U.D.C. after 21.2.1966, have been given such promotion, with all consequential benefits. Then, prayer has also been made, to place the petitioner at appropriate place in the seniority list, taking him to have been promoted as U.D.C. with effect from 21.2.1966, as per

Rule 15(1) of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969. Then, after filing writ petition, it was amended, and a prayer has also been made for quashing Annexure-R/2 to R/4, being the provisional and final seniority list, and communication of Joint Director (Administration), conveying that the demand of the petitioner for promotion cannot be accepted, unless the seniority is altered from that of 5.1.1973.

The case of the petitioner is that he was initially appointed as L.D.C. in Panchayat Samiti in the year 1960. Then vide order dt. 13.4.1966 he was promoted as U.D.C. w.e.f. 21.2.1966. This promotion was on temporary basis, but then, he was subsequently confirmed vide order dt. 3.2.1968 (Annexure-2). Then, vide order dt. 25.10.1972, the petitioner was declared surplus, and then vide order dt. 1.1.1973 (Annexure-3), the petitioner was absorbed in the Education Department, and was allotted to Jodhpur Range, and was subsequently transferred in Ajmer Range in the year 1990-91. It is then alleged, that when the question of assignment of seniority to the petitioner arose, his name was not included in the seniority list. Thereupon the petitioner made representations, and then vide Annexure-6, his seniority was shown to have been fixed w.e.f. 21.2.1966. However, the petitioner was not given

consequential benefits, like promotion to the post of Office Assistant and Office Superintendent, on and from the date the persons junior to him were promoted, therefore, he again submitted representations. The petitioner has produced Annexure-11, being the seniority list of the Office Assistants, to show, that the persons promoted as U.D.C., after the petitioner, have been given promotion against the vacancies of the year 1981-82, and have further been promoted as Officer Superintendents. Then, the provisions of Rule 15 of the Rajasthan Civil Services (Absorption of Surplus Personnel) Rules, 1969, hereafter referred to as the 'Absorption Rules' was pressed into service to claim seniority consequent upon absorption, and his consequential entitlement to the promotions. Then, the writ was subsequently amended after the reply was filed by the respondents, and by the amendment para 12A was added, likewise ground (c) and (d), in the grounds, and Clause (ii/a) in the prayer were added. In para 12A, it was contended, that by Annexure R/2 to R/4 the petitioner is being denied the benefit of seniority in the cadre of U.D.C., and before passing of these orders, no opportunity of hearing was given to the petitioner, nor copy was given, nor he was otherwise informed. In the newly added grounds it was contended, that the orders were passed without giving an opportunity of hearing, and are arbitrary and

unreasonable, and thus violative of Article 14 and 16 of the Constitution.

Thus, the whole thrust of the writ petition is, that while working as U.D.C. in the Panchayat Samiti, he was declared surplus, and was absorbed vide Annexure-3, and therefore, by virtue of Rule 15 of the Absorption Rules the petitioner is entitled to maintain that seniority, and to get consequential benefits, and that, vide Annexure-6, his seniority was recognised, but then vide Annexure R/2 to R/4 it has been taken away, without giving opportunity of hearing to the petitioner.

Reply to the writ petition has been filed by the respondents, contending inter alia, that the petition is belated, having been filed after 26 years, as he claims seniority from 21.2.1966. Then, another objection taken is about availability of alternative remedy by way of appeal before Rajasthan Civil Services Appellate Tribunal. Then, next objection taken is, that the order Annexure-3 was issued in pursuance of Annexure R/1, which has not been challenged, and therefore, the writ petition is liable to be dismissed. Factual part of the averments, about the petitioner's appointment, promotion, passing of the order Annexure-3 etc. are not in dispute. However, the plea taken

by the respondent is, that the petitioner was not absorbed in the Education Department, rather he was reappointed, vide Annexure-3, and therein, it was clearly stipulated, that surplus staff of the Panchayat Samiti would be reappointed, as distinguished from being absorbed, and a condition was also incorporated, that the staff so reappointed would get no advantage of their past service except for pension purposes. Thus, the petitioner was not absorbed, but was reappointed. Then, it was pleaded, that interim seniority list was prepared on 20.8.1990, inviting objection, to which the petitioner submitted objection, and after scrutinising representation, the petitioner's name was placed at S.No. 66A temporarily, vide Annexure R/2, considering the seniority of the petitioner from 5.1.1973, in terms of Annexure R/1, and a seniority list was also published on 13.8.1993, being Annexure R/3. Regarding Annexure 6, it was pleaded to have been issued under some misunderstanding, that the petitioner has been absorbed in the department, whereas he was really reappointed, as is clear from Annexure 3, and that, as soon as this fact came to the notice of the Department, when his case was considered for promotion from Office Assistant to Office Superintendent, the Directorate issued a note, being Annexure R/4, and that the seniority of the petitioner has been revised, keeping in view, that his seniority is to be

reckoned from 5.1.1973, and thus the petitioner does not become eligible for promotion on the post of Office Assistant before 1990-91, and that, no person junior to him has been promoted, either as Office Assistant or as Office Superintendent. It was maintained, that since the petitioner was not absorbed, but was reappointed, pursuant to Annexure-1, the Absorption Rules are of no relevance, and thus, it was prayed that the writ petition is liable to be dismissed.

I have heard learned counsel for the parties at length. Learned counsels maintain their respective stand, taken in the pleadings, while making submissions. However, arguing in detail, on the aspects of the provisions of Absorption Rules, and Annexure R/1, it was contended, by the learned counsel for the petitioner, that in view of the judgment of Hon'ble the Supreme Court, in Dr. Rajinder Singh Vs. State of Punjab, reported in AIR 2001 S.C.1769, any notification, or circular, cannot be a substitute for the Rules, so as to nullify or modify any provision of the Rules, and therefore, since the case of the petitioner is governed by the provisions of Absorption Rules, simply because, by Annexure R/1 it was stipulated to be described as reappointment, it cannot be said to anything less than absorption. Reliance was also placed on the judgment of

this Court, in Jaswant Singh Vs. State of Rajasthan, reported in RLR 1995(2)-90, to contend, the entitlement of the petitioner to get seniority from the date of promotion, consequent upon absorption.

On the other hand, learned counsel for the respondent submitted, that on the face of language of Annexure-3 and Annexure R/1, the petitioner has rightly been assigned seniority since 5.1.1973, and the petitioner is not entitled to any relief.

During the course of hearing, in view of the importance of the question involved, about rights of the petitioner, on the anvil of the provisions of Absorption Rules, I called Mr. N.M. Lodha, the learned Addl. Advocate General to assist the Court. Arguing on behalf of the respondents, Mr. Lodha submitted, that firstly, in view of Annexure R/1, it is a case of reappointment, and not absorption, and accordingly Annexure-3 has been passed, reappointing the petitioner as U.D.C. in the Education Department, and therefore, he cannot claim seniority on the post of U.D.C. from 21.2.1966. Reference was made to Rule 3(l) of the Absorption Rules, which defines the "surplus personnel" and "surplus employee", to mean, the Government Servant to whom the Rajasthan Service Rules, 1951 apply,

and who are declared surplus by the Government, or by the Appointing Authority under the directions of the Government, on their being rendered surplus to the requirements of a particular department of the Government due to the reduction of posts or abolition of offices therein and in whose case, the Government decides not to terminate their services, but to retain them in service by absorption, on other posts. Therefore, by virtue of the definition, firstly the incumbent should be a government servant, to whom Rajasthan Service Rules applies, and secondly, for such incumbent, the government should have decided to retain him in service by absorption, on other post. It was submitted, that the petitioner was an employee of Panchayat Samiti, and was not a government servant, and secondly, the government did not decide to retain the petitioner, by absorption on other post, and therefore, it cannot be said, that the petitioner falls within the category of the persons provided in Rule 3(l) of the Absorption Rules, and therefore, no benefit of Absorption Rules can be claimed by the petitioner. The other submission made was, that it was vide Annexure-3, that in the year 1973, the petitioner was reappointed as U.D.C. in Education Department, and therein it was specifically stipulated, that this reappointment will not effect the past service, inasmuch as the past service shall be counted

for the purpose of pension only, and the petitioner joined the reappointment made vide Annexure-3, and did not challenge the same, even till the date. In that view of the matter, the petitioner is estopped from raising the contentions raised. It was also contended, that while pleading the petitioner to have been absorbed, despite the fact that he was not absorbed, rather was reappointed, the petitioner is guilty of making misstatement of fact also, therefore, also he is not entitled to maintain the writ petition.

To this learned counsel for the petitioner, relying upon the judgment of this Court, in Niyaz Mohd. Khan Vs. State of Rajasthan, reported in 2002 WLC (Raj.) (UC) page 562, contended, that the services rendered by the incumbent earlier under Panchayat Samiti was declared to be State Services entitling the incumbent to relaxation of age for fresh appointment. Then, reliance was also placed on yet another judgment of Hon'ble the Supreme Court, in State of Gujarat Vs. Raman Lal, reported in AIR 1984 SC-161, specially para-31 and 32, to contend, that dealing with the identical provisions of Gujarat Panchayat Act, Hon'ble the Supreme Court had found, that the Panchayat Service is also a service under the State, after giving detailed reasons for arriving at this conclusion, and therefore, the

petitioner is required to be held, to fall within the definition of “government servant”, for the purpose of Rule 3(l). Relying upon the judgment of Hon'ble the Supreme Court, in Jarnail Singh Vs.State of Punjab reported in (1986)3 SCC-277, it was contended, that so far the order Annexure-3 is concerned, the substance is required to be seen, and not its outwardly form, merely by using the word reappointment, it cannot be said, that the petitioner was not absorbed. It was also submitted, that under the provisions of Rajasthan Subordinate Offices Ministerial Staff Rules, 1957, the mode of recruitment to the post of U.D.C. is 100 percent by way of promotion, and therefore there could be no reappointment on such post, and the only other mode of appointment could be by absorption, in accordance with different provisions of Absorption Rules. Admittedly the petitioner has been appointed as U.D.C. in Education Department, and had joined, consequent upon his being declared as surplus from Panchayat Samiti, and therefore, in absence of any law, providing for such reappointment, the only conclusion is, that the petitioner is to be taken to have been absorbed, in accordance with the Absorption Rules, and consequently, the petitioner is entitled to the consequential benefits, as flowing to him under the Absorption Rules.

I have considered the submissions, and have gone through the various judgments, and the Rules. Before proceeding further I may gainfully quote the provisions of Rule 3(l) and Rule 15 of the Absorption Rules which read as under:-

> "3(l) "Surplus Personnel" or "Surplus Employee" means the Government servant to whom the Rajasthan Service Rules, 1951 apply and who are declared surplus by the Government or by the Appointing Authority, under directions of the Government, on their being rendered surplus to the requirements of a particular department of the Government due to the reduction of posts or abolition of offices therein as measures of economy or on administrative grounds but in whose case the Government decides not to terminate their services but to retain them in service by absorption on other posts:
>
> Provided that the Committee, appointed under the various Service Rules for adjudging suitability by screening either as an exception to general methods of recruitment or as initial constitution of service, may ex-gratia recommend, if any of the employees with more than three years of service on a post for which he is to be screened is not adjudged suitable and if thereafter has no right to be appointed on a lower post, for such lower post being offered to him by absorption and thereupon such an employee shall be treated as Surplus Employee under the provisions of these rules and such person may be absorbed on the lower post on the recommendations of the Committee subject to the conditions laid down by it."

> "15. Seniority.-(1) The seniority of a surplus employee appointed substantively to a permanent post in the service or cadre in which he is absorbed shall be determined by the appointing authority concerned by placing him below the junior most permanent employee of the new service or department who has a longer period of continuous substantive service on the post compared to the continuous substantive service of the surplus employee on equivalent or higher post. The seniority of a surplus employee who is absorbed on a higher posts on

officiating basis shall be determined only in respect of his permanent post:

Provided that the seniority of the surplus employee whose length of continuous service in substantive or officiating capacity or in both such capacities in lesser than the length of continuous service in substantive or officiating capacity or in both such capacities of the junior most permanent employee of the service or cadre of the New department in which such surplus employee has been absorbed, shall be determined by placing the surplus employee, immediately below the said junior most permanent employee in the service or cadre or the department in which the surplus employee has been absorbed.

Provided further that inter-se seniority of the surplus employees absorbed in a department/service/cadre or unit under an Appointing Authority and the employees of the service/cadre of the new department, for promotion to higher post in the service or cadre in which he has been absorbed shall be determined according to the date of continued officiation in a class or category of post concerned or an equivalent or higher post provided such officiation was not of the fortuitous nature or ad hoc or an urgent temporary appointment, notwithstanding their year of substantive appointment or date of confirmation or the length of continuous substantive service in the different cadre post or service.

(2) The seniority of a surplus employee appointed to a new post in a temporary or ad hoc capacity shall, pending his appointment on a substantive basis, be determined in the following manner:

(a) In the case of a surplus employee appointed temporarily to a new post his seniority among the temporary employees holding same posts in the service or cadre in which he is absorbed shall be determined by placing him immediately below the temporary employee of the new service or cadre who has rendered a longer period of continuous temporary service compared to the continuous temporary service of the surplus employee on same equivalent or higher post.

(b) In the case of surplus employee appointed on ad hoc basis in a new post his seniority among the ad hoc employee holding same posts in the service or cadre in which he is absorbed shall be determined by placing him immediately below and ad hoc employee of the new

> service or cadre, who has rendered a longer period of continuous service on an ad hoc basis compared to the continuous ad hoc service of the surplus employee on same, equivalent or higher post:
>
> Provided that all substantive employee in a cadre or service including substantive surplus employees absorbed therein, shall rank senior to temporary employees appointed or absorbed under these rules in such cadre or service and all such temporary employees shall rank senior to all ad hoc employees appointed or absorbed under these rules or otherwise:
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> Provided further that the seniority of the employee on a post in a cadre or service including surplus employees absorbed therein and who were substantive on such posts on or before 11th December, 1969, shall be determined according to the provisions of the relevant Service Rules.
>
> (3) The seniority interse of employees declared surplus from a service or cadre shall on their appointment to new posts in another service or cadre shall be the same as it existed in the former service or cadre."

Then, before proceeding further I may also gainfully quote the provisions of Section 86 of the Rajasthan Panchayat Samiti and Zila Parishad Act, 1959, hereafter referred to as the Act of 1959, as it then existed, so also the provisions of Rule 22B, 22BB, and 22C of the Rajasthan Panchayat Samiti and Zila Parishads Service Rules, 1959, which read as under:-

> 86. Constitution of Rajasthan Panchayat Samiti and Zila Parishad Service.-(1) There shall be constituted for the State a service designated as the Rajasthan Panchayat Samiti and Zila Parishad Service and hereafter in this section referred to as the Service and recruitment thereto shall be made District wise.

(2) The service may be divided into different categories, each category being divided into different grades, and shall consist of-

(i) village level, workers,
(ii) Gram Sevikas,
(iii) primary school teachers,
(iv) ministerial establishment [except accounts clerks],
(v) fieldmen,
(vi) stockmen, and
(vii) vaccinators

(3) The State Government may encadre in the Service any other category or grade of officers and employees of Panchayat Samitis and Zila Parishads not included in Class IV services.

(4) The State Government may prescribe the duties, functions and powers of each grade and each category of officers and employees encadred in the Service.

(5) Except for first appointments to posts in the Service referred to in sub section (5) of section 31, all appointments to posts in the Service shall be made in accordance with the provisions of sections 31 and 60-

(a) by direct recruitment, or

(b) by promotion, or

(c) by transfer

(6) Appointment by direct recruitment shall be made by a Panchayat Samiti or Zila Parishad 'as the case may be, in accordance with the rules made in this behalf by the State Government, from out of the persons selected for the posts in a grade or category in the district by the District Establishment Committee referred to in sub-section (1) of section 88.

(7) Omitted by Raj.Act 14 of 1987, w.e.f. 21-4-1987

(8) The appointing Authority may, so long as selection is not made by the District Establishment Committee or selected persons are not available for appointment, make appointment in the prescribed manner on a temporary basis for a period not exceeding six months and the said period may be extended only after consultation with the District Establishment Committee.

Sub-sections (6), (7) and (8) upto 20-4-1987 were as under:-

"(6) Appointments by direct recruitment shall be made by a Panchayat Samiti or a Zila Parishad, as the case may be, in accordance with rules made in that behalf by the State Government, from out of the persons selected for posts of each grade and each category in the Service by a Selection consisting of the following three members, namely-

(i) two persons possessing the prescribed qualifications whom at least one shall be an officer of Government, whether retired or in active Government service appointed by the State Government on prescribed terms and conditions of service for a period which shall not exceed three years and

(ii) The Collector of the District for which selection is made and the Pramukh or in his absence, the Up-Pramukh of the Zila Parishad of such district:

Provided that such selections for a district if made by one two members referred to in clause (i) and the Collector of the district sitting together, in cases where the other member referred to in clause (i) and the Pramukh or the Up-Pramukh of the Zila Parishad for such district, referred to in clause (ii) is absent, shall be deemed to have been made, by the Selection Commission.

(7) One of the members mentioned in clause (i) of sub-section (6) shall be nominated by the State Government to be the Chairman of the Selection Commission.

(8) The Selection Commission shall select persons for in the service for each district, in accordance with rules made in this behalf by the State Government:

Provided further that the period of any of such temporary appointment may be extended in the circumstances specified in the first proviso only in consultation with the District Establishment Committee constituted under section 88"

(8-A) Notwithstanding anything contained in sub-section (5), sub-section (6) or sub-section (8), all persons who were appointed temporarily before the commencement of the Rajasthan Panchayat Samitis and Zila Parishads (Amendment) Act, 1976, to posts encadred in the service and who have completed at least two years

temporary service on commencement of this sub-section shall be substantively appointed to the posts on which they were temporarily appointed with effect from the date of such commencement.

(9) Appointments by-

(i) promotion shall be made by the Panchayat Samiti or the Zila Parishad, as the case may be, in the prescribed manner from amongst the persons whose names have been entered in the list prepared by the District Establishment Committee; and

(ii) transfer shall be made after consultation with the Pradhans or the Pramukhs, as the case may be, of the Panchayat Samitis or the Zila Parishads from and to which such transfer is proposed to be made.

Sub-section (9) till 20-4-1987 was as under:-

(9) Appointments by promotion or transfer of incumbents holding posts encadred in the Service shall be governed by rules made in this behalf and may be ordered by the Panchayat Samiti or the Zila Parishad, as the case may be, from amongst persons entered in district wise lists in prescribed manner-

(a) in the case of promotions or transfers within the same district, by the District Establishment Committee constituted under section 88, and

(b) in the case of other transfers, by the Selection Commission constituted under sub-section (6),

on the recommendation of the Panchayat Samiti or the Zila Parishad under whose administrative control they are for the time being and after consulting the Panchayat Samiti or the Zila Parishad, as the case may be under those administrative control they are proposed to be transferred."

(9-A) Notwithstanding anything contained in sub-section (9), the State Government may transfer any member of the service from one Panchayat Samiti to another Panchayat Samiti, whether within the same district or outside it, and may also stay the operation of, or cancel, any order of transfer made under sub-section (9) or the rules made thereunder.

(10) Persons holding posts enacted in the Service shall

be eligible for appointment or promotion to posts in a State Service or under the State Government in accordance with rules made in that behalf by the State Government and subject to terms and conditions laid down in such rules, and the persons so appointed or promoted shall count the period of their holding posts in the Service constituted under this section for purposes of seniority and pension.

(11) Persons holding appointment in a State Service shall also be eligible for appointment by transfer to a encadred in the Service constituted under this section in accordance with rules made in this behalf by the State Government and on terms and conditions laid down in those rules."

"22-B Recruitment by transfer to the Service of Government servants declared surplus on reduction/abolition of posts-(1) When a Government servant is, or is likely to be rendered surplus due to reduction/abolition of posts under the Government, he may, with his consent be appointed by transfer to the Service in the manner hereinafter provided in this rule, on a post declared by the Government to be equivalent to the post held by such Government servant immediately before such transfer.

(2) A list of such persons rendered surplus under the Government shall be sent to the Commission who shall, out of such list, select persons for posts in the Service for each district and allot the person so selected to the Panchayat Samiti/Zila Parishad to the extent of number of vacancies existing in such Panchayat Samiti/Zila Parishad. A copy of the list sent to the commission shall also be simultaneously sent to the Head of the Department concerned.

(3) The Panchayat Samiti or Zila Parishad, as the case may be, shall appoint the persons so allotted on an equated post on such terms and conditions as are applicable thereto."

"22-BB. Reverse Deputation to the service of Government.-(1) No member of the Panchayat Samiti and Zila Parishad Service shall be transferred to foreign service against his will provided that this rule shall not apply to the transfer of such a member to the service of the State Government.

(2) The deputation of persons of foreign service shall

be governed by the terms and conditions applicable to Government servants sent on deputation to foreign service, provided that no deputation allowance shall be admissible to a person transferred on deputation to the service of the State Government."

"22-C Absorption of members of the Service rendered surplus on reduction/abolition of posts-(1) On reduction/abolition of certain posts in the Service, a list of persons rendered surplus shall be communicated by the Panchayat Samiti/Zila Parishads to the Government with a copy of the District Officer (Collector) on the basis of which the Government shall prepare a district wise list of persons thus rendered surplus in the Service.

(2) A list of such of the surplus personnel which can be absorbed within the District will be forwarded by the Government to the District Establishment Committee in accordance with the number of vacancies then existing in the service, on similar posts or on posts declared by the Government to be equivalent to the posts in the service brought under reduction.

(3) The Committee shall according allot such persons to the Panchayat Samiti or Zila Parishad concerned which shall appoint persons so allotted to similar posts or to equated posts in the Service on terms and conditions as may be applicable to such equated posts.

(4) A list of such persons who are proposed to be absorbed outside the district will be sent by the Government to the Commission which shall absorb them on similar or equated posts following the procedure prescribed in sub-rule (2) and (3) of Rule 22-B, except that a list of persons to be so absorbed may not be sent to the Head of the Department."

In the above background of the legal position, the question required to be seen is, as to whether the petitioner can be said to have been absorbed, within the meaning of provisions of Absorption Rules, or it is a case of reappointment, on a promotional post, of a surplus

employee, and such reappointment having not been questioned for 20 years, whether the petitioner can be said to be entitled to any relief?

So far the legal proposition propounded by Hon'ble the Supreme Court, about circulars or notification not being capable to substitute the Rules or about the substance of the order being required to be seen etc. are concerned, there is no dispute about the principles propounded, but the question that still survives, as formulated above.

The expression “government servant” as such is not shown to have been defined anywhere. Of course, the term “the Government” and “the State” has been defined in Rule 3(h) of the Absorption Rules, to mean, Government of Rajasthan and State of Rajasthan, respectively. In that background, coming to the judgment of Hon'ble the Supreme Court, in Ramanlal's case, as relied upon by the learned counsel for the petitioner; in that case Hon'ble the Supreme Court examined the question from various stand points, proceeding on the premise, that it is neither politic nor possible to lay down any definitive test to determine when a person may be said to hold a civil post under the Government, several factors may indicate the

relationship of master and servant, however, none may be conclusive, on the other hand, no single factor may be considered absolutely essential, and that the presence of all or some of the factors, such as, the right to select for appointment, the right to appoint, the right to terminate the employment, the right to take other disciplinary action, the right to prescribe the conditions of service, the nature of the duties performed by the employee, the right to control the employee's manner and method of the work, the right to issue directions, and the right to determine the source from which wages or salary are paid, and a host of such circumstances, may have to be considered, to determine the existence of the relationship of master and servant. In each case, it is a question of fact whether a person is a servant of the State or not. In that case the controversy was to effect, that lakhs of employees working in Panchayat Institutions to whom the benefits of the recommendations of the two Pay Commissions, the Sarela and the Desai Commissions had been extended, while to the employees of the lowest category, being above six thousand, also working under the Panchayat Institutions, were denied the benefits of those recommendations, on the sole ground of birth mark, as they were denied the benefits because before they came to work under the Panchayat Institutions, they were employed in

municipalities, while others were Government servants to start with. For resolving this controversy, it was inter alia considered by Hon'ble the Supreme Court, that the duties required to be performed were in connection with the affairs of the State, which were entrusted to the Panchayat Institutions, by the statute itself, or by transfer by the Government, under the statute. The expenditure towards the pay and allowances of officers and servants of the Panchayat service, serving for the time being under any Panchayat, has, no doubt, to be met by the Panchayat from its own fund, but the fund consists, substantially of sums contributed or lent by the State Government, and of the proceeds of any tax or fee, imposed by, or assigned to, the Panchayat under the Act. The imposition of a tax or a fee in the nature of a tax, is essentially a function of the State. Then appointment was to be made in accordance with the Rules made by the Government, and could be appointed by such authority as may be prescribed by the Government, and their conditions of service shall be such as may be prescribed by the Government, it was also found, that Section 203 of the Gujarat Panchayats Act, 1961 contemplates the condition of a single centralised Panchayat Service, the classes, cadres, and posts, of which have to be determined by the Government from time to time, the mode of recruitment, whether by examination or

otherwise, the conditions of service, the powers in respect of appointments, transfers and promotions of officers and servants and disciplinary action which may be taken against them, are to be regulated by the rules made by the Government. Then, the rules required to contain a provision, entitling servants of such cadres in the Panchayat Service to promotion to such cadres in the State Service, as may be prescribed, which was taken to be a material factor, as it could not be permissible unless Panchayat Service is also a service under the State. Then, the permissibility of inter district transfers and promotion of servants belonging to the District, Taluqa, and local cadres, or within that district etc., was also considered, transferability, and the fact that certain officers have to be government servants, was also considered. In the case in hand also, the provisions of Rajasthan Panchayat Samitis and Zila Parishads Act, and the Rules framed thereunder, as quoted above, are substantially in pari-materia. Under Section 86 of the Act of of 1959, the centralised service has to be constituted as Rajasthan Panchayat Samiti and Zila Parishad Service, recruitment wherein was to be made district wise, different categories were prescribed, and the State Government was authorised to prescribe duties, and powers, of each grade and category of officers and employees, encadred in the service. Then, the

appointment was to be made in accordance with the rules, framed in this behalf by the State Government, the selection board included person possessing requisite qualification, being an officer of the Government, whether retired, or in active Government service, the Collector of the District and one of the members mentioned in clause (i) of sub-section 6 to be nominated by the State Government, was to be chairman of the Selection Commission. Then, the State Government is having the power to transfer any member from one Panchayat Samiti to another Panchayat Samiti, whether in same district or outside, and could also stay operation of, or cancel, any order of transfer. Then, under Sub-section 10 the persons holding posts encadred in the Service is to be eligible for appointment or promotion to posts in a State Service, or under the State Government, in accordance with rules, made in this behalf by the State, and subject to terms and conditions laid down in such rules, and the person so appointed, or promoted, is to count the period of holding post in the service, for the purpose of seniority and pension. Likewise the person holding appointment in a State Service, is also eligible for appointment by transfer to an encadred Service constituted under Section 86, in accordance with the rules, framed by the State Government. The rules in this regard have been framed, being the Rajasthan Panchayat Samitis and

Zila Parishad Service Rules, and the above matters are taken care of by the provisions of rule 22A, 22B, 22BB, and 22C. Thus, as per the parameters laid down by Hon'ble the Supreme Court, in Raman Lal's case, the petitioner can very well be said to be a “government servant” within the meaning of Rule 3 (l) of the Absorption Rules.

The question then is, that apart from being the government servant, the other requirement is, that Rajasthan Service Rules should apply to such government servant. In this regard, a look at the provisions of Rule 34 of the Rules of 1959 would show, that Rajasthan Service Rules have been made applicable only regarding the matters of pay, allowances, pension leave and other conditions of service of the members of the service, till such time, as separate rules are framed. Obviously, it cannot be said, that Rajasthan Service Rules applies to the employees as such. After enactment of original Rule 34, by subsequent amendments, made from time to time, some provisions have been made in the Rules of 1959, with respect to some of the matters enumerated in Rule 34 as well. Thus, for the purpose of Rule 3(l) of the Absorption Rules, it cannot be said, that R.S.R. applies to the petitioner. Still, other requirement is, as appearing from Rule 3(l) is, that in case of such government servant, as may be falling with the

definition, on being rendered surplus, the Government should have decided not to terminate the services but to retain their service "by absorption on another post". This requirement of Rule 3(l), as the things stand, does indicate, that in order to enable a government servant to claim benefit of seniority etc. under the absorption rules, there should be decision of the State in respect of such surplus employees, to retain him in service by absorption. Meaning thereby, that the Government may terminate the service also, on being declared surplus, or may bear compassion by providing alternative employment, not necessarily by absorption. If the later course is resorted to, then it cannot be said, that the employee was absorbed, so as to be entitled to claim the benefits of Rule 15 of the Absorption Rules. In this regard a look at Annexure R/1 would show, that it provided a complete scheme with respect to such surplus employees, inasmuch as it clearly provided that the surplus staff of Panchayat Samiti would be reappointed "as distinguished from absorbed". Then condition no. 4 thereof further stipulates, that the surplus staff of Panchayat Samiti would be reappointed, "only after the surplus employees of Government have been absorbed". Thus, it is clear, that the absorption was to be made of such government servant as were the "employees of the Government" declared surplus, and have been ordered to

be absorbed, and in the event of vacancies being available thereafter, that the surplus staff of the Panchayat Samiti was to be reappointed. Then, in Clause-6 it was stipulated, that such re-appointed staff would get no advantage of the past service, except for purpose of pension. This clearly shows, that the action taken was not that of absorption.

True it is, that under the Rules of 1957, the post of U.D.C. is required to be filled 100 per cent by promotion, and there is nothing to show, that it could be filled by direct recruitment. However, that by itself would not entitle the petitioner to claim, that reappointment should be treated to be absorption. This is one aspect of the matter.

The other aspect of the matter, required to be considered is, from the stand point of provisions of the Act of 1959, and the Rules of 1959. Considering from that stand point, a look at the provisions of Rule 22C, as quoted above, does show, that under the Rules of 1959, there is a separate provision for absorption, inasmuch as sub-rule (1) provides, that on reduction/abolition of certain posts in the Service, a list of persons rendered surplus shall be communicated by the Panchayat Samiti/Zila Parishads to the Government, on the basis of which,

Government shall prepare district wise list of persons thus rendered surplus. Then, according to sub-rule (2), a list of such surplus personnel, which can be absorbed within the district, will be forwarded by the Government to the District Establishment Committee, in accordance with the number of vacancies, then existing in the service, on similar posts, and the Committee is to accordingly allot such persons, to the Panchayat Samiti or Zila Parishad concerned, who are to appoint the persons. Then, according to sub-rule 4, a list of such persons, who are proposed to be absorbed outside the District, is to be sent by the Government to the Commission, which shall absorb them on similar or equated posts, following the procedure prescribed in sub-rule (2) and (3). Thus, according to Rule 22C, the surplus employees are eligible to be appointed in the manner provided under this rule, and as noticed above, the procedure is of sending the list by the Government to the Commission, who is to absorb them on similar or equated post, in accordance with the provisions of sub-rule (2) and (3) of Rule 22B. In this background again a look at the provisions of Sub-section 10 of Section 86 of the Act of 1959 shows, that the persons holding the post encadred in the service, are eligible for appointment, or promotion to the post in the State Service, in accordance with the Rules made by the State, and subject to terms and conditions laid

down in such Rules. Thus, a combined reading of Rule 22C and Section 86(10) does show, that in view of these provisions, the petitioner could be appointed in the State Service, on being declared surplus from the Panchayat Service. Obviously in that event, the hurdles of Subordinate Offices and Ministerial Staff Rules, 1957 can also not come in the way.

If that were the situation the rigor of Section 86(10) does also come in, which provides "and the person so appointed or promoted shall count the period of their holding posts in the Service constituted under this section for purposes of **seniority** and pension". Thus, by virtue of Section 86(10) the persons so appointed, is to count the period of holding post in the Panchayat Service, for the purpose of seniority as well as pension. Significantly, this Section 86(10) does not at all talk about any absorption, rather it provides for eligibility of the person holding post in the service to be appointed in the State Service, and also provides the consequence to flow.

The question then is, as to, on the face of language of Section 86(10), what is the effect of Annexure R/1, and the plain and simple answer is, that it being not supported by any authority of law, rather being contrary to

the provisions of Section 86(10), cannot have any adverse effect on the rights of the petitioner.

This being the position, leaving apart the provisions of Absorption Rules, in view of the provisions of Section 86(10) of the Act of 1959, the petitioner is entitled to count the period of holding post in the service for purposes of seniority and pension.

The matter does not end here, inasmuch as, strictly speaking the above may be the legal position, but then coming to the question of entitlement of the petitioner to relief, the difficulty still remains, mainly that the petitioner was ordered to be reappointed vide Annexure-3 way back on 1.1.1973, and accepting this Annexure-3, the petitioner joined. So far as Annexure-6 is concerned, apart from the fact, that therein the date of seniority has been pleaded to be an out come of inadvertence, thereby the petitioner has been promoted on the post of Office Assistant, and it cannot be said to be a conscious decision of the respondents, adjudicating the seniority of the petitioner, to be available to him from 21.2.1966. It is not shown by the petitioner, as to when did he first raise the objection about his having not been promoted on his turn, by seniority for promotion, as Office

Assistant. Even the Annexure-11, the provisional seniority list, which does not include the name of the petitioner, is of the year 1987, while Annexure-6 is of 1992. Thus, apart from accepting Annexure-3, and serving thereunder, even after Annexure-11, the petitioner did not raise any grievance, about his having not been promoted as Office Assistant, despite persons promoted as U.D.C. since May 1966, having been promoted as Office Assistants long back, rather even on passing of Annexure-6, whereby the petitioner was promoted as Office Assistant only on temporary basis, till duly selected candidate from D.P.C. is available, he did not raise any protest. Obviously the cause of action accrued to the petitioner immediately on issuance of Annexure-3, itself whereby he was held to be entitled to be computed the past services only for the purpose of pension, and not for other purposes, but then he did not challenge the action at that time, nor at the time of issuance of Annexure-11, nor did he raise any grievance even on issuance of Annexure-6.

In that view of the matter, at least by acquiescence and latches, in the facts and circumstances of particular case, I do not find the petitioner to be entitled to be granted the reliefs as claimed.

The net out come of the aforesaid discussion is that I do not find any force in the writ petition. The same is, therefore, dismissed. The parties shall bear their own costs.

(N.P.GUPTA),J.